

# **Mental Health Services Oversight and Accountability Commission**

## **Final Statement of Reasons**

### **Innovative Projects**

#### **AMENDMENTS TO INNOVATIVE PROJECTS**

##### **UPDATE OF INITIAL STATEMENT OF REASONS**

Below is an update of the information in the Initial Statement of Reasons published on August 11, 2017.

##### **SECTION(S) AFFECTED: 3580.010**

##### **Section 3580.010.**

No changes were made to the originally proposed text of subdivisions (a) and (b).

In subdivision (c) changes to the originally proposed text consisted of deleting the text and adding new text that lists the demographic information a county is required to collect for the report from a minor younger than 12 years of age. During public comment, numerous stakeholders indicated that information about a minor's race, ethnicity, primary language, disability status, and gender is known and should be collected to better understand who is being served and to help reduce disparities in access to and services for mental health. Further, stakeholders suggested that information that cannot be obtained directly from the minor may be collected from the minor's parent or legal guardian. There was significant debate during the statewide implementation meetings about whether minors should be asked about their sexual orientation and gender identity especially if they had not had such a conversation with their parent or guardian. The regulation was changed to require counties to collect demographic data, except for sexual orientation, current gender identity and veteran status.

##### **NON-SUBSTANTIVE CHANGES MADE DURING OFFICE OF ADMINISTRATIVE LAW REVIEW**

##### **Section 3580:**

In Subdivision (a)(1)(A) changes to the originally proposed text consisted of deleting "2017" and keeping the existing text, "following the end of the fiscal year for which the County is reporting," which had been deleted in the proposed amendments. This change is non-substantive because adding "2017" after "December 31" resulted in a retroactive date that would be impossible to comply with. MHSOAC determined to withdraw this amendment and revert to existing text to make compliance with the regulation possible.

Subdivision (a)(1)(A) was also changed by adding a comma between the words "fiscal year" and "whichever occurs first" in the third sentence of this subdivision.

Subdivision (a)(1)(A) was also changed by re-phrasing the terms "Annual Update or Three Year Program Expenditure Plan" to "Three-Year Program and Expenditure Plan or an Annual Update" for ease of reading and consistency with other MHSOAC regulations.

### **Section 3580.010:**

In Subdivision (b), changes to the originally proposed text consisted of adding a reference to a specific Article of the California Education Code applicable to pupil privacy. The California Education Code sections were previously identified in the MHSOAC document Finding Solutions, included in the rulemaking file under Tab M and upon which the MHSOAC relied upon during its amendment process.

In Subdivision (c), changes to the originally proposed text consisted of adding the word, “and report” between “collect” and “the demographic”. This is a non-substantive change because the section within which subdivision (c) is in relates to the information that must be included in the report and thus “and report” is implied.

### **LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

### **RESPONSE TO PUBLIC COMMENTS**

Public comment summaries and responses for the initial 45-day comment period, public hearing, and the 15-day comment period are included as part of this document and can be found in the rulemaking file under Tabs K and L. Below is a summary of those comments, the responses, and the action taken. The comments and the recommended responses and action were presented to the Mental Health Services Oversight and Accountability Commission for review and adoption at the Commission meeting held on November 16, 2017. The documents presented at the Commission meeting are all hereby incorporated by reference into this document and can be found in the Rulemaking file under Tab K: Summaries and Materials (11-16-2017) and Tab L: Summaries and Materials (01-25-18).

#### **Section 3580.010(c): Comments Regarding Demographic Reporting Requirements for Children Younger Than 12 Years of Age**

Ten (10) comments relevant to the July 2017 proposed amendments eliminating reporting requirements of demographic information from minors under 12 years old were received. Those comments fall into one of the following three categories:

- (1) Delete the entire proposed amendment and require counties to report all (8) categories currently required demographic information, including sexual orientation and gender identity from all individuals including children under 12 years old. (Comment from California Alliance.)
- (2) Modify the proposed amendment to require counties to report all required information about children under 12 and clarify that the information would be collected from the parents or other legal caretakers to the extent permissible under state/federal privacy laws. (Comment from Young Minds Advocacy.)
- (3) Modify the proposed amendment to require counties to report only certain demographic information from children under 12. Nine organizations/individuals support collecting all the demographic information except (a) sexual orientation, and (b) current gender identity. Two of these organizations also recommend the regulations explicitly state that counties are not required to report on the veteran status of children under 12. (Comments from REMHDCO, California LGBT Health & Human Services Network, NorCalMHA, California Pan-Ethnic Health

Network, California Health+ Advocates, Muslim American Society Social Services Foundation, California Chapter of the National Association of Social Workers, Richmond Area Multi-Service, and Laurel Benhamida. Also testimony of Poshie Walker of NorCalMHA, Stacie Hiramoto of REMHDCO, Elizabeth Oseguera of California Health+ Advocates, Mandy Taylor of California LGBT Health & Human Services Network, and Kiran Savage of California Pan-Ethnic Health Network.)

**Response and Action Taken:** Delete proposed subdivision (c) of section 3580.010 and replace it with text consistent with the comments listed in number (3) above to read as follows:

- (c) Except for sexual orientation, current gender identity, and veteran status, a county shall collect the demographic information required under subdivision (a)(4) of this section from a minor younger than 12 years of age. Information that cannot be obtained directly from the minor may be obtained from the minor's parent, legal guardian, or other authorized source.

### **Comments Not Related To the Proposed Amendments**

Comments not relevant to the proposed rulemaking were received. Those comments can be found in the rulemaking file. These comments and the recommended responses and action were presented to the Mental Health Services Oversight and Accountability Commission for review and adoption at the Commission meeting held on November 16, 2017. The documents presented at the Commission meeting are all hereby incorporated by reference into this document.

**Response and Action Taken:** The comments are not related to the specific proposed amendments and are not relevant. No action/changes.

### **DOCUMENTS INCORPORATED BY REFERENCE**

None

### **ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

No alternative were proposed to the Mental Health Services Oversight and Accountability Commission that would lessen any adverse economic impact on small business.

### **ALTERNATIVES DETERMINATION**

The Mental Health Services Oversight and Accountability Commission has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing statutory policy or other provision of law.

The proposed regulatory action adopted by the Mental Health Services Oversight and Accountability Commission is the only regulatory provisions identified by the Commission that accomplishes the goal of addressing several challenges faced by California' county behavioral health agencies with complying with some of the current regulations for the administration of the Innovative Project component of the

Mental Health Services Act. Except as set forth and discussed in the summary and responses to comments, no other alternative have been proposed or otherwise brought to the Commission's attention.